

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>RALPH LEE YENDELL,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 1:15-cv-166</b>
	)	
<b>SUPERINTENDENT SCI-FOREST,</b>	)	
<b>et al.,</b>	)	
	)	
<b>Respondents.</b>	)	

**MEMORANDUM ORDER**

The within civil action was commenced on July 10, 2015, when Petitioner Ralph Lee Yendell filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). ECF No. 3. Therein, Petitioner challenged the judgment and sentence imposed upon him by the Court of Common Pleas of Crawford County. *Id.*

On July 20, 2015, the case was stayed in order to give Petitioner an opportunity to exhaust his remedies in state court. ECF No. 5. On February 11, 2019, after Petitioner had exhausted his state court proceedings, he moved to lift the stay. ECF No. 7. The case was then referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation (“R&R”) in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and the Local Rules for Magistrate Judges.

On February 14, 2019, Judge Lanzillo entered an order lifting the stay and reopening the case. ECF No. 8. Thereafter, in accordance with Judge Lanzillo’s directive, Petitioner filed an amended habeas corpus petition. ECF No. 9.

On April 23, 2019, the District Attorney of Crawford County (“Respondent”), filed a motion to dismiss. ECF No. 16. Respondent moves to dismiss this action on the grounds that the within petition is untimely and that each of the bases for relief in the amended petition has been procedurally defaulted.

On December 13, 2019, Magistrate Judge Lanzillo issued an R&R (ECF No. [22]) recommending that the Respondent’s motion to dismiss be denied. Noting that AEDPA’s statute of limitations was tolled during the pendency of Plaintiff’s state court PCRA proceedings, Judge Lanzillo calculated that the within petition is timely by two days. ECF No. 22 at 4. With respect to the issue of procedural default, Judge Lanzillo observed that Respondent had not offered any challenge to Petitioner’s assertion that he can establish cause for the procedural default based on the ineffectiveness of his PCRA counsel. Moreover, inasmuch as Petitioner’s ineffectiveness-of-counsel argument will necessitate an assessment of the merits of his underlying claims in light of the entire state court record, Judge Lanzillo opined that it would be inappropriate to dismiss the amended §2254 petition at this procedural stage.

Respondent’s objections to the R&R were due to be filed no later than December 27, 2019. ECF No. 22. As of this date, however, no objections have been received.

Accordingly, after *de novo* review of the petition for a writ of habeas corpus and the other documents in this case, together with the Magistrate Judge’s report and recommendation, the following order is entered:

NOW, this 7<sup>th</sup> day of January, 2020;

IT IS ORDERED that the Motion to Dismiss filed by Respondent, the District Attorney of Crawford County, ECF No. [16], shall be, and hereby is DENIED.

IT IS FURTHER ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued on December 13, 2019, ECF No. [22], is adopted as the opinion of the court.

A handwritten signature in black ink, reading "Susan Paradise Baxter". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

SUSAN PARADISE BAXTER  
United States District Judge

cc: Ralph Lee Yendell  
JP2695  
SCI Forest  
P.O. Box 945  
Marienville, PA 16239  
(via U.S Mail, First Class)

The Honorable Richard A. Lanzillo (via CM/ECF)